



Agenda Item Number: \_\_\_\_\_

## BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS

Meeting Date: January 24, 2006

Department: Zoning, Building and Planning Staff Contact: Catherine VerEecke, Program Planner

**TITLE:** APPEAL: Zone Map Amendment from R-1 to C-1 (CZ-50014/CO-60001)

### COUNTY PLANNING COMMISSION RECOMMENDATION:

Denial

### SUMMARY:

At the November 2, 2005 public hearing, the County Planning Commission (CPC) voted (7-0) to recommend denial of the request for a zone map amendment from R-1 to C-1 zoning on the westerly portion of Tract C, Fruitvale Addition, located at 6301 Edith Boulevard NE, containing approximately 5.9 acres. The decision was based on six (6) Findings (See Attachment 1, Notice of Decision)

During the November 2, 2005 hearing, the applicants' agent argued that C-1 zoning is most appropriate for the applicants' property, as opposed to their original request (CSU-50018) for renewal of a Special Use Permit (CZ-99-1), which was to expire in June 2005. The applicants had decided that the zone change request was a better mechanism for dealing with issues noted by staff and neighbors associated with Special Use Permits, including complying with previous conditions of approval. (See Attachment 3—CPC Deferral Request, Letter Changing Special Use Permit Request to Zone Change Request, pp.73-75, and Attachment 2, CPC Information Packet pp. 7-66).

The agent's initial justification letter for C-1 zoning also states that the applicants believe that C-1 zoning would eliminate the problems associated with the R-1/C-1 split zoning from the property, which extends from Edith Blvd. to the railroad tracks (Attachment 2, pp.29-31). He points out that other properties along Edith Blvd. have C-1 zoning and that the trend in the area appears to be away from residential use in favor of heavy commercial and light industrial uses. Evidence of support from residents of the general area was provided (Attachment 2, p.63-68).

The CPC decided, however, that the proposed C-1 zoning (as opposed to the underlying R-1 zoning or a Special Use Permit) is not acceptable for the subject site. It is inappropriate given the continued presence of residential zoning and houses immediately adjacent to the subject site to the north and south, which could be negatively impacted by a number of the uses allowed under C-1 zoning. Contrary to the agent's argument, the CPC concluded that C-1 zoning is not very prevalent and is generally limited to frontage sites along Edith Blvd. of about 200 feet deep, while the subject property is about 1000 feet deep (Attachment 7, Draft CPC minutes, pp.145-153). In addition, the applicant had failed to meet the criteria of Resolution 116-86 for demonstrating the appropriateness of the land use change, and there was opposition at the hearing to the zone change from the adjacent property owners to the north of the site. The CPC also clarified with staff's assistance that the existing uses on the property (Vermeer Equipment, contractor's yards), which were permitted under the Special Use Permit that expired, would not be allowed under C-1 zoning (Attachment 7, Draft CPC minutes, pp.108-112).

The applicant is now appealing the CPC recommendation of denial of C-1 zoning. In the appeal justification (Attachment 4, p.76-86), the agent disagrees with the conclusions of the CPC, stating that there have in fact been changes in the neighborhood in the direction of C-2 and M-1 uses. He also states that C-1 zoning is not in conflict with the North Valley Area Plan land use policies in that small-scale businesses or possibly residences would occupy the site.

In the appeal application, the agent also indicates that he would like the initial Special Use Permit request (CSU-50018) to be considered, even though the request was changed to C-1. The agent states that either a new hearing should be scheduled with the CPC to hear this Special Use Permit or that this “appeal should also consider the failure of the County to allow applicants a full and impartial hearing on that request.” As another alternative, the agent suggests “that this matter be remanded to the CPC for consideration of an amended site development plan.” A Special Use Permit would allow the applicants to keep at least one of the current tenants on the site (Vermeer Equipment) in conjunction with the requested C-1 zoning.

Property owners from immediate north of the subject property have submitted letters in opposition to the appeal request for C-1 zoning and to the agent’s request to continue the existing uses on the property (Attachment 5, pp.87-89).

### **Criteria for Evaluating Zone Map Changes and Special Use Permit Applications**

Resolution 116-86 (see Attachment 6) states that the applicant must demonstrate that the existing zoning is inappropriate because:

1. there was an error when the existing zone map was created; or
2. changed neighborhood or community conditions justifies a land use change; or
3. a different land use category is more advantageous to the community, as articulated in the Comprehensive Plan or other County Master Plan, the even though (1) and (2) above do not apply.

<b>ATTACHMENTS:</b>	<b>PAGE</b>
1. County Planning Commission Notice of Decision Letter (November 4, 2005)	3
2. County Planning Commission Information Packet.	5
3. CPC Deferral Request, Request to Change Special Use Permit Request to Zone Change	73
4. Appeal application and justification.	76
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6. Resolution 116-86.	89
7. Draft, County Planning Commission November minutes.	91

## **STAFF ANALYSIS SUMMARY**

### **ZONING, BUILDING & PLANNING DEPARTMENT:**

Staff Recommends Denial of Appeal.